

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

ABILITY INSURANCE COMPANY,

Plaintiff,

v.

Civil Action No.: 1:20-cv-03851 (GBD)

ST PAPER, LLC

Defendant.

**PLAINTIFF’S RESPONSE TO DEFENDANT’S STATEMENT OF ADDITIONAL
UNDISPUTED MATERIAL FACTS**

Pursuant to Local Rule 56.1, Plaintiff Ability Insurance Company (“Ability” or “Plaintiff”), by and through its attorneys Troutman Pepper Hamilton Sanders LLP, hereby submits its Response to ST Paper, LLC’s (“ST Paper” or “Defendant”) Statement of Additional Undisputed Material Facts in Opposition to Ability’s Motion for Summary Judgment. Citations herein to “AIC SMF” refer to Ability’s Statement of Undisputed Facts in support of its own concurrently filed Motion for Summary Judgment (ECF 63).

**I. RESPONSE TO DEFENDANT’S STATEMENT OF ADDITIONAL
UNDISPUTED FACTS**

1. Ability Insurance Company (“Ability”) was named as defendant in a case filed in the Circuit Court for Oconto County, Wisconsin, styled *Oconto Falls Tissue, Inc. v. ST Paper, LLC*, Case No. 17 CV 104 (Oconto Cty., Wis. Filed June 1, 2017) (the “Wisconsin Action”). On May 8, 2019, Ability filed a motion to dismiss in the Wisconsin Action. Second Declaration of Jonathan T. Smies (“Second Smies Decl.”) ¶ 2 & Ex. A.)

RESPONSE: Not disputed.

2. In its brief in support of its motion to dismiss the Amended Complaint in the Wisconsin Action, Ability argued that the same Allonge document that is attached to the Complaint in this matter as Exhibit 7 does not evidence an assignment of Seller Note 1 from Maple Bridge Funding, LLC to Ability. Specifically, Ability stated: “Exhibit D to the Amended Complaint, which Plaintiff claims evidences the assignment of Note 1 from Maple Bridge to Ability, does not evidence such transaction but instead evidences the assignment of a promissory note between Green Box and Maple bridge to Ability.” (Second Smies Decl. Ex. A at 2 n.2).

RESPONSE: Disputed as misleading. The Wisconsin motion concerned claims by OFTI that Ability owed duties to it, whether contractual or otherwise. The partially quoted footnote in Paragraph 2 above was included in the brief in that context. Further, the entire footnote reads: “Exhibit D to the Amended Complaint, which Plaintiff claims evidences the assignment of Note 1 from Maple Bridge to Ability, does not evidence such transaction but instead evidences the assignment of a promissory note between Green Box and Maple Bridge to Ability. Such promissory note is referenced in Exhibit C, but is not attached as an exhibit to Plaintiff’s Amended Complaint.”

DATED: New York, NY
September 24, 2021

**TROUTMAN PEPPER HAMILTON
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By: /s/ Angelo A. Stio, III

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CERTIFICATE OF SERVICE

I hereby certify that on September 24, 2021, a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

/s/ Angelo A. Stio, III

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